



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 7, 1998

Ms. Stephanie Spiars
Open Records Officer
Texas Board of Plumbing Examiners
929 E. 41st Street
Austin, Texas 78765

OR98-1876

Dear Ms. Spiars:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117243.

The Texas Board of Plumbing Examiners (the "board") received a request for "all pertinent documents, notes (Board members only) and recordings relating to" several items on the board's May 11, 1998 agenda. You inform us that the requestor has narrowed his request to seek information relating to agenda item eight only. Gov't Code 552.222(b). You first argue that the responsive board notes are not public information. You also claim that one document is protected from required public disclosure by section 552.107 of the Government Code. Finally, you claim that notes taken by a board member during a "closed executive session" and the first draft of the certified agenda of the executive session must be withheld. We have considered your arguments and have reviewed the documents at issue.

We will first examine your contention that the board members' notes from the May 11, 1998 board meeting need not be released because they are strictly "personal notes" and not public information subject to the Open Records Act. Information is generally public if it is collected, assembled, or maintained under a law, ordinance, or in connection with the transaction of official business (1) by a governmental body or (2) for a governmental body and the governmental body owns the information or has a right of access to it. *See* Gov't Code § 552.021(a).

In Open Records Decision No. 635 (1995), we observed that certain factors are relevant in deciding whether a document is essentially a governmental or personal document: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. Using these factors, we

believe the notes you have submitted for our review are public information subject to disclosure. The documents were created by board members about an official meeting. It also appears that they were created at the meeting with public resources to assist the board member in his duties as a public official. Open Records Decision No. 635 (1995). Because you raise no exception to disclosure of the notes, they must be released. Gov't Code § 552.301; Open Records Decision No. 542 (1990) (concluding that burden to prove applicability of exception is placed on governmental body).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. You have established that the document you have marked under 552.107 is protected from disclosure. The document consists of notes taken by the board's attorney and reveals confidential client communications and the attorney's legal advice. This document may be withheld.

Finally, we will address the release of the executive session materials. Section 551.104(c) of the Government Code states that a "certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order." Thus, the board's certified agenda must not be disclosed unless a court rules otherwise in an action filed under the Open Meetings Act. Gov't Code § 551.104; Open Records Decision No. 495 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions). Likewise, we believe this protection extends to a draft of the final certified agenda. The requested draft of the certified agenda must not be released except as provided by section 551.104 of the Government Code.

The board member's notes taken during the executive session, on the other hand, are not mentioned in section 551.104. Consequently, the notes, although they may reflect information in the closed certified agenda or tape of a closed meeting, are governed by the Open Records Act. Open Records Letter Ruling No. 96-2414 at 4 (1996); *cf.* Open Records Decision Nos. 605 (1992) (Open Meetings Act does not authorize a governmental body to withhold records because they were discussed in or relate to an executive session); 485 (1987). As outlined above, information is generally public if it is collected, assembled, or maintained under a law in connection with the transaction of official business by a governmental body. Gov't Code § 552.021(a). Because the board member's notes of the executive session are public information, and you have raised no other exception to their disclosure, they must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Don Ballard". The signature is fluid and cursive, with the first name "Don" and last name "Ballard" clearly distinguishable.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117243

Enclosures: Submitted documents

cc: Mr. Russell Wyman
2807 Andrea Lane
Dallas, Texas 75228
(w/o enclosures)

Ms. Mab Fitz-Gerald
Assistant Attorney General
Office of the Attorney General
Administrative Law Division
P.O. Box 12548
Austin, Texas 78711-2548